

LEGAL NEWSLETTER

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- **Mgaloblishvili, Kipiani,
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Laws

Law of Georgia On amendments made to the Law of Georgia on "Executive proceedings"

under the rules defined by the present law the following acts are subjects to execution:

administrative act of an authorized administrative organ (official) regarding an administrative offence;

administrative act of independent national regulatory organs on imposing a fine as a sanction;

and the following court acts (hereinafter referred to as "decisions;")

- Court decision, ruling, resolution on private law cases that has gained a legal force;
- Court verdict, ruling and resolution that has gained a legal force with respect to proprietary payment on criminal cases;
- Court verdict on imposing a fine on a person as a punitive measure on criminal cases;

- Court resolution that has gained a legal force on administrative offence case with respect to the proprietary payment and imposing a fine on a person as a punitive measure
- Order for payment and an order on return of a subject of leasing to the lessor.
- **Decision of private arbitration**
- Court decision turned to immediate execution according the article 268 of the code of Civil Procedure of Georgia.
- **Decision of arbitration, the execution of which is imposed by international treaties of Georgia**
- **Decisions of the foreign courts, International Criminal Court, which have to be executed under the Georgian legislation.**
- **Decision of the European Court of Human Rights which, according to the European Convention for the Protection of Human Rights and fundamental Freedoms, are obligatory for Georgia.**



Laws

Law of Georgia on the amendments made to the Law of Georgia on Insurance

According to the amendments made to the law of Georgia on insurance, changes have been made to the provisions regulating the issues, related to granting licenses to insurance companies or their branches.

The law requires that in order to grant the license to the insurer, the latter should submit an application and attach the following documentation:

- Copies of founding documents;
- Copy of a document from the State registrar verifying that the insurer is a legal person;
- documents regarding the completed authorized capital;
- Information about the executives;
- Document verifying the payment of license tax;

As for granting license to a branch, first of all it has to be noted that according to the novels to the said law, the branch has to have foreign currency or stock on its account within a Georgian commercial bank for the whole period of its functioning, in the amount set out by the Georgian legislation for the insurance companies registered in Georgia.

The license to the branch is granted by the State supervisory service of insurance of Georgia on the basis of the application submitted by the founding insurance/reinsurance company. The application should contain the following information:

- The name of the founding insurance/reinsurance company and the name of the country where it is registered.
- the juridical address of the branch (representative office) and information regarding the scope of its activities;
- information regarding the persons authorized for representation.

The application itself, however is not enough, the following list of documents should be attached to the application:

- copy of license for carrying out insurance activities issued by the relevant organ of the country where the insurance/reinsurance company is located.
- report of the activities carried out by the insurance/reinsurance company within its country for the past 3 years.
- document verifying putting the money / stocks on a deposit;
- document verifying the payment of the license tax.



Laws

According to the current legislation, the branch (representative office) terminates the insurance activities if:

- the founding insurance/reinsure company made a decision on the above-mentioned;
- the founding insurance / reinsurance company was deprived of license in the country of registration;
- the procedures of bankruptcy were launched with respect to the founding insurance / reinsurance company or the procedure of its liquidation started for any other reason;
- the conditions of the license are violated.

Amendments to the Law of Georgia on communications and postal system

the recent amendments made to the Law of Georgia on communications and postal system highlighted mainly the issues related to the communications and postal system regulatory Commission (hereinafter referred to as a Commission), the budget of the Commission and questions regarding the licensing.

According to the legislation in effect, the Commission is a legal person of private law, it is a permanent body and is no subject to supervision from any state organ; questions related to the formation of the body; the rights and respective duties of its Head, and the responsibilities of its members are regulated by the Georgian Law on Broadcasting.

The law also sets out that the Commission has its operational budget and it is obliged to publish the annual budget by December the 1 of every year. The budget is constructed mainly from two types of taxes:

1) license fee; and 2) annual regulatory fee.

Annual regulatory fee is the main source for Commission's budget creation. The mentioned tax is levied annually from the license holders and its amount should not exceed 1% of the license holder's income.

As for the license fee, it is imposed on those, seeking a license for the purposes of temporary use of frequency spectrum, and temporary use of code for international phone communications.



Laws

The law also defines questions with respect to licensing. In order to get a license, application and the attached documents should be presented to the Commission. The law also makes it possible to modify the license in two instances:

- 1) if there are changes made to the effective legislation in the field of communications and postal system;
- 2) if a backed up request of the license holder or the Commission itself is present. However, modifying the license is not allowed if it will result in a conceptual change of the license. In this event, a new license should be granted.

The law also draws a distinction between the termination and nullification of the license, which is the sole authority of the Commission. The termination of a license is usually imposed till the relevant violations will be eliminated. The license can be renewed by the Commission based on the policy holder's application. As for the nullification – in this case the license loses its legal force and can not be subject to renewal.



Court Practice

Court Precedent

Disputed issue: commitments deriving from the preparatory work of an agreement.

"Veli-96" LLC and JSC "Sakartvelos Agrobiznesbanki" held negotiations on signing a loan agreement. For securing the loan agreement, the parties signed pledge and mortgage agreements.

However the loan agreement was never signed.

"Veli -96" initiated a lawsuit against JSC "Sakartvelos Agrobiznesbanki", requesting:

- reimbursement of damage (lost profit) in the amount of 66.240 GEL;
- reimbursement of the expenses related to signing an agreement in the amount of 404.7 GEL;
- reimbursement of lawyer's fee

Under the decision of January 9, 2002 of the Vake-Saburtalo District Court, the claim has been fully satisfied. The Appellate Court reversed the District Court decision and with its new decision did not satisfy the claim. The Chamber of Commercial, Entrepreneur and Bankruptcy cases of the Supreme Court of Georgia, with its resolution of March 21, 2002, left the appellate court's decision unchanged.

According to the Cassation Court, since the loan agreement was never signed between the parties, there is no obligation,

therefore, there could never be damage caused by the breach of an obligation.

Even though under section 2, article 317 of the Civil Code, the obligation can arise from the preparatory work of an agreement as well; according to the Cassation Court, under section 2, article 317, party can only be requested to sign an agreement. The plaintiff in this case, however, requested not the signing of an agreement but reimbursement of lost profit.

With respect to the reimbursement of the expenses related to signing an agreement, the court ruled the following: according to section 3, article 317 of the Civil Code, party can claim the reimbursement of the expenses related to signing an agreement, if the agreement was not signed due to the other party's fault.

The Cassation Court indicated that even though pledge and mortgage agreements were signed between the parties, the plaintiff failed to present to the bank documents, verifying the fact of registration of the mentioned agreements in public registrar.

Under these circumstances the court decided that the bank was not obliged to sign a loan agreement, therefore, the agreement was never signed not due to the bank's but to the plaintiff's fault, which, therefore, prevents the latter's right to claim reimbursement of the expenses related to the signing of an agreement



Business Environment

Competition was announced for granting license for cellular communication services

The competition is being increased in the field of cellular communication services. Soon to the two existing cellular companies, operating now in Georgia third one will be added. Georgian National Commission on communications on the meeting held on January 25 announced a commercial competition on getting a license for performing cellular services.

As prime-news was informed, the initial price for the license is 5 807 000 GEL. The contest will be held on May 25, 2005.

As they say in Georgian National Commission on communications, the interest in purchasing the license for performing the cellular communication services is quite high. However, as the head of the Commission, Mr. Dimitry Kitoshvili told Prime-News, existing cellular communication companies may also take part in the contest.

Georgia is removed from the list of countries exposed to changing risks

Britain's Export Credits Guarantee Department has removed Georgia from the list of countries with changing risks

As the deputy minister of foreign affairs - Giorgi Gomiashvili has stated at the conference held on January 21, 2005, this is an important factor for increasing British investments in Georgia. According to his words, in terms of ensuring the British investments, Georgia was the last among the CIS countries in the list.

Mgaloblishvili, Kipiani, Dzidziguri (MKD) law firm was founded in November 1996. It operates as a general partnership and is recognized as well-established, respected leading law firm in Georgia with national, regional and international clients.



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Disclaimer: This Legal update is written as a general guide only. It is not intended to contain definitive legal advice which should be sought as appropriate in relation to a particular matter. If you would like further information on the issues reported here, please contact Mr. Mikheil Gogeshvili at: mgogeshvili@mkd-law.com

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